IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

OP.No. 5161 of 2003(M)

PETITIONER:

THE PRESIDENT, MANGALODAYAM HANDLOOM
WEAVERS' CO-OPERATIVGE SOCIETY, MANGALODAYAM
KATTACHALKUZHI P.O., BALARAMAPURAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR

RESPONDENTS:
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1. SMT. R.SUDHA, SUDHA BHAVAN,
KATTACHALKUZHI P.O., VIA. BALARAMAPURAM,
THIRUVANANTHAPURAM.

2. THE LABOUR COURT, KOLLAM.

R1 BY ADV. SRI.GOPAKUMAR R.THALIYAL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.9111/2003 IN O.P. NO.5161/2003

DISMISSED:

13.12.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF CLAIM PETITION DT.3.9.96 FILED BY PETTIONER.

P2: PHOTOCOPY OF APPLICATION DT.21.2.97 FILED BY PETITIONER.

P3: TRUE COPY OF WRITTEN STATEMENT DT.3.4.97.

P4: TRUE COPY OF ADDITIONAL WRITTEN STATEMENT DT.15.5.97.

P5: TRUE COPY OF REPLICATION DT.17.9.97 FILED BY R1.

P6: TRUE COPY OF AWARD PUBLISHED IN THE GAZETTE NO.51 DT.24.12.2002 PUBLISHING THE AWARD AS PER G.O.(RT)3523/2002/LBR DT.19.11.2002.

P7: AFFIDAVIT SWORN BY SRI.N.KARUNAKARAN, ADVOCATE, WHO APPEARED FOR THE PETITIONER SOCIETY BEFORE THE LABOUR COURT, KOLLAM IN I.D. NO.94/1995.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.5161 of 2003

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Dated this the 13th day of December, 2007.

JUDGMENT

The petitioner is challenging Ext.P6 award passed by the Labour Court, Kollam reinstating the first respondent with back wages. The case of the petitioner is that first respondent was dismissed from service of the society after she was found to have misappropriated the funds in a proper enquiry conducted by the Society. When the first respondent got the Industrial Dispute referred to the Labour Court, petitioner raised various contentions including maintainability of the ID before the Labour Court. On merits petitioner contended that proper enquiry was conducted wherein first respondent was found guilty of the charges leveled against her. However, during posting of the case petitioner remained exparte, but after filing written statement. The Labour Court took evidence of the first respondent and based on statement filed by the first respondent, her claim was allowed and she was ordered to be reinstated with back wages. Counsel for the petitioner contended that the finding of the Labour Court that enquiry conducted was improper and consequently the punishment imposed was unjustified is without any basis. On the other hand counsel

for the first respondent contended that the Labour Court has gone through the records and relied on the statement of the first respondent. On going through Ext.P6 award I find that the Labour Court has not even cared to go through the enquiry report, the findings in which is the basis of the punishment. I do not find any justification for the Labour Court to hold that the enquiry is improper without even seeing the enquiry report. Even if the management remained exparte, it was the duty of the Labour Court to have gone through the records, particularly the enquiry report and if matter was decided on merits after going through the enquiry report, then of course the case would have been different for the petitioner. Ext.P6 as such is not tenable because without even going through the enquiry report and without stating as to how the enquiry report is improper, the Labour Court has no authority to reject the findings in the enquiry report and reverse the punishment imposed based on it. In the circumstances, I set aside Ext.P6 and restore the ID back to the Labour Court with direction to the Labour Court to give opportunity to the parties to adduce evidence and dispose of the case afresh within a period of four months from the date of receipt of copy of this judgment. There will be direction to the petitioner to give balance arrears of wages payable under Section 17B of the Industrial Disputes Act within two weeks from date of receipt of copy of this

judgment and furnish receipt before the Labour Court, Kollam. I make it clear that the court will take up the case for evidence only after ensuring that full Section 17B benefit till-today is paid by the petitioner to the first respondent.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms